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July 27, 1993

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FEDERAL COMMUNICATIONS COMMISSION  
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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections 12 and 19  
of the Cable Television Consumer  
Protection and Competition Act of 1992

Development of Competition and  
Diversity in Video Programming  
Distribution and Carriage

MM Docket No. 92-265

To: The Commission

**REPLY COMMENTS OF LIFETIME TELEVISION**

Hearst/ABC-Viacom Entertainment Services, doing business as Lifetime Television ("Lifetime"), respectfully submits these Reply Comments concerning the Petition For Reconsideration and Clarification ("Petition") of the First Report and Order<sup>1</sup> in this proceeding, filed by Viacom International Inc. ("Viacom"), on June 10, 1993. Lifetime supports the proposal of Viacom and others that the Commission adopt a de minimis subscribership exemption to its new program access rules.

Lifetime is a basic cable television program service, launched in 1984, which serves more than 56 million subscribers on some 6,000 cable systems. As its Comments in the initial rule


making proceeding explained,<sup>2</sup> Lifetime is a general partnership owned by companies with broadcast as well as cable interests. Its majority owner is Hearst/ABC Video Services ("HAVS"), which holds a 53.3 percent general partnership interest. HAVS itself is a general partnership owned by Capital Cities/ABC Video Enterprises Inc., a subsidiary of Capital Cities/ABC Inc., and The Hearst Corporation. HAVS has no interest in cable systems. Viacom holds a minority 33.3 percent general partnership interest in Lifetime through its subsidiary, LT Holdings, Inc. Another wholly-owned division of Viacom, Viacom Cable, owns and operates cable television systems.

Lifetime's Comments argued that if the Commission were to adopt a version of the broadcast attribution rules to measure vertical integration, then it should also recognize the need for limiting unnecessary burdens on programmers where no anti-competitive potential or incentive exists. As one modification, Lifetime proposed that the Commission extend the broadcast rules' "single majority shareholder" exemption to partnerships such as itself. Thus, a multiple system owner's ("MSO") minority interest in a satellite cable programmer, even if above the attribution benchmark, would be exempt from attribution if another entity which is not a cable operator held an interest greater than 50 percent.

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<sup>2</sup>Comments of Lifetime Television in MM Docket No. 92-265, filed January 25, 1993.

Lifetime proposed to balance this single majority equity holder exemption by incorporating an additional component to the attribution analysis: despite the existence of a controlling



anticompetitive behavior exist even at subscribership levels much higher than the 5 percent exemption proposed.<sup>4</sup>

The need for avoiding overly broad restrictions is particularly acute here in view of the all-encompassing attribution standard adopted by the Commission. Indeed, this standard is far more inclusive than that underlying the broadcast multiple ownership rules.<sup>5</sup> Thus, Lifetime's original concern that a sweeping attribution standard would hinder capital investment in program creation and distribution has become even more heightened. Cable operators could reduce their stake in existing programmers, and refrain from investing in new or failing program services, in order to avoid the statutory program access requirements. This result would clearly contravene the express Congressional policy underlying the 1992 Cable Act, to ensure the continued expansion of programming offered and increase diversity,<sup>6</sup> as well as the findings of both Congress and the Commission that investment by cable operators in programming services has benefitted viewers in significant respects.<sup>7</sup>

Application of the new attribution standard to Lifetime in particular demonstrates that it sweeps far beyond what is

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<sup>4</sup>R. Crandall and M. Glassman, "The Economic Case For A De Minimis Exemption From The Commission's Program Access Rules" ("Crandall and Glassman").

<sup>5</sup>Cf 47 C.F.R. Sec. 73.3555 (Notes).

<sup>6</sup>Cable Act Sec. 2(b); 47 U.S.C. Sec. 548(a).

<sup>7</sup>Report in MM Docket No. 89-600, 5 FCC Rcd 4962 (1990); House Committee on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong., 2d Sess. (1992) at 41, 43.

necessary to serve the purpose of the statute. Lifetime's existing rate structure does not discriminate against nonaffiliated cable operators, whose systems are charged no more for programming than those owned and operated by minority partner Viacom, within the same subscriber levels. Nevertheless, despite its record of fair dealing, Lifetime faces compliance with a costly regulatory scheme triggered by the fact that it has a minority cable partner, although that partner's subscribers represent less than 1.9 percent of Lifetime's cable subscriber base.

Lifetime submits that an exemption based upon de minimis subscribership, as proposed by Viacom, would be one appropriate way to insure that the program access rules do not sweep too broadly. Viacom's economic analysis convincingly demonstrates that a vertically-integrated programmer that depends on affiliated cable systems for less than 5 percent of its total subscriber base has no incentive to deny programming to non-cable

for almost two and one-half times the revenue that Lifetime derives from Viacom cable systems. Thus, Lifetime could ill-afford to exclude competing distribution technologies even if it had not been committed to expanding its noncable distribution outlets. Moreover, because more than two-thirds of Lifetime's total revenue is derived from advertising revenue, which depends directly on the total number of subscribers receiving Lifetime, it would make no sense for Lifetime to limit its viewership by denying programming to emerging technologies.

Viacom's economic analysis convincingly demonstrates that an "anticompetitive strategy" by a vertically-integrated firm depends upon the programmer's ability to switch subscribers from alternative distributors to its affiliated cable systems.<sup>8</sup> Because a more specialized programming service is attractive to a smaller number of viewers than a more generalized one, however, the number of subscribers which could be expected to switch distributors to receive that service is not likely to be sufficient to make the denial of programming profitable.<sup>9</sup> Such is the case with Lifetime, which carries contemporary entertainment and informational programming of special interest to women. Accordingly, there would be no economic incentive for such anticompetitive behavior on Lifetime's part.

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<sup>8</sup>Crandall and Glassman at 3-4.


<sup>9</sup>Id. at 6.

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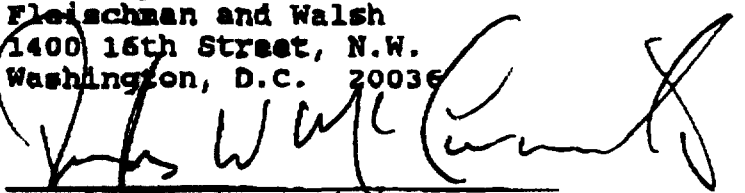
Lifetime continues to believe that the relief it proposed initially, based upon particular ownership arrangements such as the existence of a single majority equity holder, remains a very valid approach. In addition, the de minimis subscribership exemption, which is fully supported by Viacom's thoughtful and comprehensive economic analysis, provides another effective, carefully crafted means of providing relief for entities such as Lifetime, in which no real potential or incentive for anticompetitive behavior exists. Lifetime urges the Commission to fashion fair and effective relief as soon as possible.

Respectfully submitted,

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July 26, 1993

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**CERTIFICATE OF SERVICE**

I, Eve J. Lehman, a secretary at the law firm  
Fleischman and Walsh, hereby certify that I have this 26th day of  
July, 1993 placed a copy of the foregoing "Reply Comments Of  
Lifetime Television" in U.S. First Class Mail, addressed to the  
following: